ऑनर किलिंग (Honour Killing) आणि खाप पंचायत (Khap Panchayat) याबाबत प्रतिबंधात्मक उपाययोजना.

महाराष्ट्र शासन

गृह विभाग

शासन परिपत्रक क्र. याचिका-०७२२/४०३/प्र.क्र.११/विशा-१ अ

मंत्रालय, दुसरा मजला, मादाम कामा मार्ग, हुतात्मा राजगुरु चौक, मुंबई-४०० ०३२.
दिनांक : २० ऑक्टोबर, २०२२.

<u>परिपत्रक :</u>

शक्ती वाहिनी यांनी ऑनर किलिंग व खाप पंचायत संदर्भात मा. सर्वोच्च न्यायालय येथे रिट याचिका क्र.२३१/२०१० दाखल केली आहे. त्या अनुषंगाने दिनांक २७.०३.२०१८ रोजी मा. सर्वोच्च न्यायालयाने आदेश दिले आहेत. सदरहू आदेशातील परिच्छेद क्रमांक ५३ मध्ये केंद्र शासन व संबंधित राज्य शासन यांनी करावयाच्या कार्यवाहीबाबत सविस्तर निर्देश दिले आहेत. सदर निर्देशातील प्रतिबंधात्मक कार्यवाहीबाबत मुद्दा क्र.b to f मध्ये सूचना देण्यात आल्या आहेत. उक्त सूचनांप्रमाणे कार्यवाही करण्याबाबत पोलीस महासंचालक, महाराष्ट्र राज्य कार्यालयाने सर्व पोलीस घटकांना सूचना द्याव्यात.

अ) प्रतिबंधात्मक कार्यवाही (Preventive Measures):-

(१) आंतरजातीय किंवा आंतरधर्मीय विवाहाची घटना निदर्शनास आल्यास पोलीस ठाण्याच्या प्रभारी अधिका-यांनी अधिक सावधगिरी बाळगावी.

(२) खापसारखी तत्सम पंचायतीच्या कोणत्याही प्रस्तावित मेळाव्याची माहिती कोणत्याही पोलीस अधिकाऱ्याच्या किंवा जिल्हा प्रशासनाच्या कोणत्याही अधिकाऱ्याच्या माहितीत आल्यास, त्याने ताबडतोब त्याच्या तात्काळ वरिष्ठ अधिकाऱ्याला कळवावे आणि त्याच वेळी कार्यक्षेत्रातील पोलीस उपअधीक्षक आणि पोलीस अधीक्षक/ पोलीस आयुक्त यांना कळवावे.

(३) अशी माहिती मिळाल्यावर, पोलीस उपअधीक्षक (किंवा क्षेत्र/जिल्ह्याच्या संदर्भात राज्य शासनाचे वरिष्ठ पोलीस अधिकारी) खापसारखी तत्सम पंचायतीच्या सदस्यांशी ताबडतोब संवाद साधावा आणि अशा बैठकी/मेळाव्याचे आयोजन करण्यास कायद्यानुसार परवानगी नसल्याची बाब सदस्यांच्या निदर्शनास आणावी. याशिवाय, त्यांनी कार्यक्षेत्रातील पोलीस स्टेशनच्या प्रभारी अधिकाऱ्याला दक्ष राहण्यासाठी आणि आवश्यक असल्यास, प्रस्तावित मेळाव्याला प्रतिबंध करण्यासाठी पुरेसे पोलीस बंदोबस्त तैनात करण्याबाबत निर्देश द्यावेत.

(४) अशा उपाययोजना करूनही, बैठक आयोजित केली असल्यास, पोलीस उपअधीक्षकांनी वैयक्तिकरित्या बैठकीदरम्यान उपस्थित राहावे आणि सभेला हे पटवून द्यावे की जोडप्याच्या किंवा जोडप्याच्या कुटुंबातील सदस्यांना कोणताही त्रास होईल असा कोणताही निर्णय घेता येणार नाही. जे आयोजकांव्यतिरिक्त सभेमध्ये सहभागी होणारे प्रत्येकजण वैयक्तिकरित्या फौजदारी खटल्यासाठी जबाबदार असतील. सभेच्या सदस्यांच्या चर्चेचे आणि सहभागाचे व्हिडिओ रेकॉर्डिंग करावे जेणेकरुन ज्याच्या आधारावर कायद्याची अंमलबजावणी करणारी यंत्रणा योग्य कारवाई करू शकेल.

(५) खापसारखी तत्सम पंचायतीच्या सदस्यांशी संवाद साधल्यानंतर सभेला प्रतिबंध करता येत नाही आणि/ किंवा जोडप्याला किंवा त्यांच्या कुटुंबातील सदस्यांना हानी पोहोचण्याची शक्यता आहे असे पोलिस उपअधीक्षकांना वाटत असल्यास जिल्हा दंडाधिकारी/ उपविभागीय दंडाधिकारी/ पोलीस आयुक्त यांना कलम १४४ सीआरपीसी अंतर्गत प्रतिबंधात्मक आदेश लागू करण्यासह सीआरपीसी अंतर्गत प्रतिबंधात्मक पावले उचलण्याचे आदेश जारी करण्यासाठी संबंधित क्षेत्राचे जिल्हा / सक्षम अधिकारी यांनी त्वरित प्रस्ताव सादर करावा तसेच सीआरपीसी कलम १५१ अंतर्गत सभेतील सहभागींना अटक करावे.

ब) उपचारात्मक कार्यवाही (Remedial Measures):-

(१) राज्य पोलिसांनी प्रतिबंधात्मक उपाययोजना करुनही, खापसारखी तत्सम पंचायत झाली आहे आणि आंतरजातीय किंवा आंतरधर्मीय जोडपे/ कुटुंबावर कारवाई करण्याचा कोणताही हुकूम पारित केला आहे असे स्थानिक पोलिसांच्या निदर्शनास आल्यास परिक्षेत्रीय पोलिस अधिकाऱ्याने त्वरित भारतीय दंड संहितेच्या योग्य तरतुदींनुसार कलम १४१, १४३, ५०३ सह आयपीसीच्या ५०६ सह गुन्हा दाखल करावा.

(२) गुन्हा दाखल झाल्यानंतर त्याबाबतची सूचना पोलीस आयुक्त/ पोलीस अधीक्षक/ पोलीस उपअधीक्षक यांना देण्यात यावी जेणेकरुन गुन्हाचा तपास प्रभावीपणे केला जाईल.

(३) आंतरजातीय/ आंतरधर्मीय विवाह करणा-या जोडप्याला/ कुटुंबाला आवश्यक ती सुरक्षा पुरवावी.

(४) जिल्हा दंडाधिकारी/ पोलीस आयुक्त/ पोलीस अधीक्षकांनी अशा जोडप्यांना/ कुटुंबांना दिल्या जाणाऱ्या धमकीच्या तक्रारी अत्यंत संवेदनशीलतेने हाताळावी. सदर जोडपे हे सक्षम प्रौढ आहेत की नाही हे प्रथम तपासावे. त्यानंतर, आवश्यक असल्यास, त्यांना त्यांच्या विवाह सोहळ्यासाठी पोलिस संरक्षणाखाली रीतसर नोंदणी करण्यासाठी मदत करावी.

(५) जोडप्याच्या नाते/ विवाहाला त्यांच्या कुटुंबातील सदस्य/ स्थानिक समुदाय/ खाप सारखी यंत्रणा यांच्याकडून विरोध असल्याची जोडप्याकडून तक्रार प्राप्त झाल्यास जिल्हा दंडाधिकारी/ पोलीस अधीक्षक/ पोलीस आयुक्त यांच्याकडून अतिरिक्त पोलीस अधीक्षक दर्जाच्या अधिकाऱ्याची नेमणूक करुन प्राथमिक चौकशी करावी. अतिरिक्त पोलीस अधीक्षकांनी एक आठवड्याच्या आत पोलीस अधीक्षकांना अहवाल सादर करावा.

(६) जिल्हा पोलीस अधीक्षक/ पोलीस आयुक्त, असा अहवाल प्राप्त झाल्यानंतर, संबंधित उपविभागाच्या प्रभारी पोलीस उपअधीक्षकांना गुन्हा नोंदविण्याचा निर्देश द्यावा. जोडप्यांना धमकावणाऱ्या व्यक्तींविरुद्ध आणि आवश्यक असल्यास, सीआरपीसी कलम १५१ लावावे. याव्यतिरिक्त, पोलीस उपअधीक्षक हे तपासाच्या प्रगतीवर वैयक्तिकरित्या पर्यवेक्षण करतील आणि ते तत्परतेने पूर्ण झाले आणि त्याच्या तार्किक अंतापर्यंत पोहोचले याची खात्री करावी.

(क) दंडात्मक कार्यवाही (Punitive Measures):-

उपरोक्त निर्देशांचे पालन करण्यात पोलीसांचे अपयश हे जाणूनबुजून निष्काळजीपणाचे आणि/किंवा गैरवर्तनाचे कृत्य मानून त्यावर सेवा नियमांतर्गत विभागीय कारवाई करावी.

२. मा. सर्वोच्च न्यायालय यांनी रिट याचिका क्र.२३१/२०१० मध्ये दिनांक २७.०३.२०१८ रोजी दिलेल्या आदेशानुसार योग्य ती कार्यवाही तातडीने करण्याची सर्व नोडल ऑफीसर यांनी योग्य ती दक्षता घ्यावी. मा. सर्वोच्च न्यायालयाच्या सदर आदेशाची प्रत सोबत जोडली आहे.

३. उपरोक्त प्रमाणे कार्यवाही करण्यास पोलीस अधिका-यांनी निष्काळजीपणा केल्यास त्यांच्यावर नियमाप्रमाणे कारवाई करण्यात येईल.

४. सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करुन देण्यात आले असून त्याचा संगणक सांकेतांक २०२२१०२०१६४०४७२५२९ असा आहे. हे परिपत्रक डिजिटल स्वाक्षरीने साक्षांकित करुन निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

Sanjay Dagadu Khedekar

Digitally signed by Sanjay Dagadu Khedekar
DN: c=IN, o=Government Of Maharashtra, ou=Home Department, postalCode=400032, st=Maharashtra, 2.5.4.20=a53701d2758331055dd3c46d615f8367912b1c64cd218e709c1b4de20bdf4f85, cn=Sanjay Dagadu Khedekar
Date: 2022.10.20 16:46:44 +05'30'

(संजय खेडेकर)

उपसचिव, महाराष्ट्र शासन.

प्रति,

१) मा. राज्यपालांचे सचिव, राजभवन, मलबार हिल, मुंबई.

२) मा. मुख्यमंत्री यांचे अपर मुख्य सचिव.

३) सर्व मा. मंत्री/ राज्यमंत्री यांचे खाजगी सचिव.

४) मा. विरोधी पक्षनेता, विधानसभा/ विधानपरिषद, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई.

५) सर्व विधानसभा/ विधानपरिषद सदस्य, महाराष्ट्र विधानमंडळ.

६) पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई.

७) सर्व पोलीस आयुक्त.

८) सर्व जिल्हा दंडाधिकारी.

९) सर्व पोलीस अधीक्षक.

१०) निवडनस्ती.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 231 OF 2010

Shakti Vahini ...Petitioner(s)

Versus

Union of India and others ...Respondent(s)

J U D G M E N T

Dipak Misra, CJI

Assertion of choice is an insegregable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said:-

> "Liberty, taking the word in its concrete sense consists in the ability to choose."

When the ability to choose is crushed in the name of class honour and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large. The question that poignantly emanates for consideration is whether the elders of the family or clan can ever be allowed to proclaim a verdict guided by some notion of passion and eliminate the

life of the young who have exercised their choice to get married against the wishes of their elders or contrary to the customary practice of the clan. The answer has to be an emphatic "No". It is because the sea of liberty and the ingrained sense of dignity do not countenance such treatment inasmuch as the pattern of behaviour is based on some extra-constitutional perception. Class honour, howsoever perceived, cannot smother the choice of an individual which he or she is entitled to enjoy under our compassionate Constitution. And this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. It is also necessary to state here that the old order has to give way to the new. Feudal perception has to melt into oblivion paving the smooth path for liberty. That is how the statement of Joseph J. Ellis becomes relevant. He has propounded:-

> "We don't live in a world in which there exists a single definition of honour anymore, and it's a fool that hangs on to the traditional standards and hopes that the world will come around him."

2. Presently, to the factual score. The instant Writ Petition has been preferred under Article 32 of the

Constitution of India seeking directions to the respondents-State Governments and the Central Government to take preventive steps to combat honour crimes, to submit a National Plan of Action and State Plan of Action to curb crimes of the said nature and further to direct the State Governments to constitute special cells in each district which can be approached by the couples for their safety and well being. That apart, prayers have been made to issue a writ of mandamus to the State Governments to launch prosecutions in each case of honour killing and take appropriate measures so that such honour crimes and embedded evil in the mindset of certain members of the society are dealt with iron hands.

3. The petitioner-organization was authorized for conducting Research Study on “Honour Killings in Haryana and Western Uttar Pradesh” by order dated 22.12.2009 passed by the National Commission for Women. It is averred that there has been a spate of such honour killings in Haryana, Punjab and Western Uttar Pradesh and the said trend is on the increase and such killings have sent a chilling sense of fear amongst young people who intend to

get married but do not enter into wedlock out of fear. The social pressure and the consequent inhuman treatment by the core groups who arrogate to themselves the position of law makers and impose punishments which are extremely cruel instill immense fear that compels the victims to commit suicide or to suffer irreparably at the hands of these groups. The egoism in such groups getting support from similarly driven forces results in their becoming law unto themselves. The violation of human rights and destruction of fundamental rights take place in the name of class honour or group right or perverse individual perception of honour. Such individual or individuals consider their behaviour as justified leaning on the theory of socially sanctioned norms and the legitimacy of their functioning in the guise of ethicality of the community which results in vigilantism. The assembly or the collective defines honour from its own perception and describes the same in such astute cleverness so that its actions, as it asserts, have the normative justification.

4. It is contended that the existence of a woman in such an atmosphere is entirely dependent on the male view of the

reputation of the family, the community and the milieu. Sometimes, it is centered on inherited local ethos which is rationally not discernible. The action of a woman or a man in choosing a life partner according to her or his own choice beyond the community norms is regarded as dishonour which, in the ultimate eventuate, innocently invites death at the cruel hands of the community prescription. The reputation of a woman is weighed according to the manner in which she conducts herself, and the family to which the girl or the woman belongs is put to pressure as a consequence of which the members of the family, on certain occasions, become silent spectators to the treatment meted out or sometimes become active participants forming a part of the group either due to determined behaviour or unwanted sense of redemption of family pride.

5. The concept of honour with which we are concerned has many facets. Sometimes, a young man can become the victim of honour killing or receive violent treatment at the hands of the family members of the girl when he has fallen in love or has entered into marriage. The collective behaves like a patriarchal monarch which treats the wives, sisters

and daughters subordinate, even servile or self-sacrificing, persons moving in physical frame having no individual autonomy, desire and identity. The concept of status is accentuated by the male members of the community and a sense of masculine dominance becomes the sole governing factor of perceptive honour.

6. It is set forth in the petition that the actions which are found to be linked with honour based crimes are- (i) loss of virginity outside marriage; (ii) pre-marital pregnancy; (iii) infidelity; (iv) having unapproved relationships; (v) refusing an arranged marriage; (vi) asking for divorce; (vii) demanding custody of children after divorce; (viii) leaving the family or marital home without permission; (ix) causing scandal or gossip in the community, and (x) falling victim to rape. Expanding the aforesaid aspect, it is stated that some of the facets relate to inappropriate relationship by a woman some of which lead to refusal of arranged marriages. Certain instances have been cited with regard to honour crimes and how the said crimes reflect the gruesome phenomena of such incidents. Murder in day light and brutal treatment in full public gaze of the members of the society reflect that the

victims are treated as inanimate objects totally oblivious of the law of the land and absolutely unconcerned with the feelings of the victims who face such cruelty and eventually succumb to them. The expression of intention by the couples to get married even if they are adults is sans sense to the members who constitute the assembly, for according to them, it is the projected honour that rules supreme and the lives of others become subservient to their desires and decisions. Instances that have been depicted in the Writ Petition pertain to beating of people, shaving of heads and sometimes putting the victims on fire as if they are "flies to the wanton boys". Various news items have been referred to express anguish with regard to the abominable and horrifying incidents that the human eyes cannot see and sensitive minds can never countenance.

7. It is contended in the petition that the parallel law enforcement agency consists of leading men of a group having the same lineage or caste which quite often meets to deal with the problems that affect the group. They call themselves Panchayats which have the power to punish for the crimes and direct for social boycott or killing by a mob.

Sometimes these Panchayats have the nomenclature of *Khap Panchayats* which have cultivated and nurtured the feeling amongst themselves that their duty is sanctified and their action of punishing the hapless victims is inviolable. The meetings of the collective and the discussions in the congregation reflect the level of passion at the highest. It is set forth that the extra-constitutional bodies which engage in feudalistic activities have no compunction to commit such crimes which are offences under the Indian Penal Code. It is because their violent acts have not been taken cognizance of by the police and their functioning is not seriously questioned by the administration. The constitutional provisions are shown scant regard and human dignity is treated at the lowest melting point by this collective. Article 21 which provides for protection of life and liberty and guards basic human rights and equality of status has been unceremoniously shown the exit by the actions of these Panchayats or the groups who, without the slightest pangs of conscience, subscribe to honour killing. In this backdrop, prayers have been made as has been stated hereinbefore.

8. A counter affidavit has been filed on the behalf of the Union of India, Ministry of Home Affairs and Ministry of Women and Child Development, respondent Nos. 1, 2 and 3 respectively. It has been contended that honour killings are treated as murder as defined under Section 300 of the IPC and punishable under Section 302 of the IPC. As the police and public order are State subjects under the Constitution, it is primarily the responsibility of the States to deal with honour killings. It is put forth that the Central Government is engaging various States and Union Territories for considering a proposal to either amend the IPC or enact a separate legislation to address the menace of honour killing and related issues.

9. Pursuant to the order of this Court dated 9th September, 2013, the Union of India has filed another affidavit stating, *inter alia,* that in order to tackle the issue of 'honour killings', a Bill titled 'The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill' has been recommended by the Law Commission of India vide the 242nd Law Commission Report. The Union of India

has further contended that since the matter of the 242nd Law Commission Report falls under List III, i.e., Concurrent list of the Seventh Schedule to the Constitution of India, consultation with the Governments of the States and Union Territories is a *sine qua non* for taking a policy decision in this regard.

10. In a further affidavit dated 16th January, 2014, the Union of India has contended that as on the said date, 15 States/UTs have sent their positive responses, while responses from other remaining States/UTs were awaited. The Union of India filed an additional affidavit on 25th September, 2014 wherein vide paragraph 4 it is averred that six more States/UTs have sent positive responses in favour of 'The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill' and that reminders have been sent to the remaining States/UTs whose responses are awaited. Further, it has been submitted that after receiving comments from the remaining States/UTs, necessary action shall be taken by the Union of India in the matter. It is the stand of the Union of India that a draft Bill in consultation

with all stakeholders will be prepared for the avowed purpose as soon as the comments are received. It has also been set forth that several advisories have been issued to the State Governments from time to time regarding the steps needed to prevent crimes against women including special steps to be taken to curb the menace of honour killing.

11. An affidavit has been filed by the State of Punjab stating, *inter alia,* that it is not taking adversarial position and it does not intend to be a silent spectator to any form of honour killing and for the said reason, it has issued Memo No.5/151/10-5H4/2732-80 in the Department of Home Affairs and Justice laying down and bringing into force the revised guidelines/policies in order to remove any doubt and to clear any uncertainty and/or threat prevalent amongst the public at large. The policy, as put forth, envisages dealing with protection to newly wedded couples who apprehend danger to life and liberty for at least six weeks after marriage. It also asserted that the State is determined to take pre-emptive, protective and corrective

measures and whenever any individual case comes to notice or is highlighted, appropriate action has been taken and shall also be taken by the Government. That apart, the reply affidavit reflects that all the culprits of the crime have been booked under the law and proceeded against.

12. The State of Haryana has filed an affidavit denying the allegations made against the State and further stating that adequate protection has been given to couples by virtue of the order of the High Court and District Courts and sometimes by the police directly coming to know of the situation. It is contended that FIRs have been lodged against persons accused of the crime and the cases are progressing as per law. The stand of the State of Haryana is that an action plan has already been prepared and the Crime Against Women Cells are functioning at every district headquarter in the State and necessary publicity has already been given and the citizens are aware of those cells.

13. The State of Jharkhand has filed its response stating, *inter alia*, the measures taken against persons involved in such crimes. Apart from asseverating that honour killing is

not common in the State of Jharkhand, it is stated that it shall take appropriate steps to combat such crimes.

14. A counter affidavit has been filed on behalf of NCT of Delhi. The affidavit states that Delhi Police does not maintain separate record for cases under the category of "Honour Killing". However, it has been mentioned that by the time the affidavit was filed, 11 cases were registered. It is urged that such cases are handled by the District Police and there is a special cell functioning within Delhi Police meant for serious crimes relating to internal security and such cases can be referred to the said cell and there is no necessity for constitution of a special cell in each police district. Emphasis has been laid that Delhi Police has sensitized the field officers in this regard so that the issues can be handled with necessary sensitivity and sensibility. The Department of Women and Child Development has also made arrangements for rehabilitation of female victims facing threat of honour killing and efforts have been made to sensitize the society against commission of such crimes. A circular dealing with the subject 'Action to be taken to

prevent cases of "Honour Killing"' has been brought on record.

15. The State of Rajasthan, in its reply, had strongly deplored the exercise of unwarranted activities under the garb of khap panchayats. The State of Rajasthan contends that it has issued circulars to the police personnel to keep a check on the activities of the panchayats and further expressed its willingness to abide by any guidelines that may be issued by this Court to ameliorate and curb the evil of honour killing that subsists in our society.

16. The State of Uttar Pradesh has filed two counter affidavits wherein it is stated that it is the primary duty of the States to protect the Fundamental Rights enshrined and guaranteed under the Constitution of India. It is further contended that although there is no specific legislation to regulate and prevent "honour killing", yet effective measures under the present law are being taken by the State to control the same. The said measures are in the nature of directions and guidelines to the law enforcement agencies. Further, the State of Uttar Pradesh has brought on record that there have been no reported cases of "honour killing" or

"social ostracizing" in the State for the period from 01.01.2010 till 31.12.2012. Yet, time and again, directions are being given to the police stations to keep a close watch on the activities and functioning of the Khaps. The State of Uttar Pradesh has acceded to comply with any directions which this Court may issue.

17. The State of Bihar has, in its affidavit, acknowledged that honour killing is a heinous crime which violates the fundamental rights of the citizens. Although the State of Bihar has taken the stance that cases of honour killing in the State are almost nil, yet a list of five cases which may assume the character of honour killing have been mentioned in the affidavit. The State has further averred that several reformative steps have been taken for the upliftment and empowerment of women and constant efforts are being made to sensitize people. It has been asserted that the State of Bihar has initiated a scheme to provide National Saving Certificate amounting to Rs. 25,000/- as incentive to any woman performing inter-caste marriage in order to ensure their economic stability.

18. It has been contended by the State of Madhya Pradesh that the State Government and the police are alive to the problem of honour killings and they have created a "Crime Against Women Cell" at the State level headed by the Inspector General of Police to ensure safety of couples and active prosecution in each case of honour killing. The M.P. Government, vide order no. F/21-261/10 dated 27.01.2011, has issued specific instructions to the District Magistrates/Superintendent of Police for taking strict action in cases of honour killing.

19. It is the contention of the State of Himachal Pradesh that there are no Panchayats of the nature of Khap Panchayats operating in the State of Himachal Pradesh and that there have been no cases of honour killing reported in the past 10 years. The State avers that several measures are being taken to combat the social evils prevailing in the society.

20. An application for intervention, on behalf of several Khap Panchayats, filed by “Manushi Sanghatan” has been allowed. It has been averred by Manushi Sanghatan that, on being requested by the media to voice their concern on the

activities of Khap panchayats, the Sanghatan has conducted a survey into the functioning of the Khap Panchayats, but they were unable to find any evidence to hold the Khap Panchayats responsible for honour killings occurring in the country. In this factual background, the Sanghatan contends that the proposed bill, “The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill', is a futile exercise in view of the ample existing penal provisions and it is stated that the powers that the said bill aims to stipulate may have the result of giving power to vested interests to harass well meant gatherings of local communities. The intervenor has also challenged the findings of the report of the petitioner on various grounds.

21. The petitioner has filed a rejoinder affidavit wherein it has been highlighted that this Court has taken cognizance of the brutal killings that take place in the name of honour and it is urged that although some States have formed an Action Plan in pursuance of the directions issued by this Court, yet they have failed to effectively implement the same in letter and spirit. In view of this fact, effective guidelines to

the police and law enforcement agencies to curb the menace of honour killing need to be formulated and implemented.

22. From the stand taken by the concerned States, it is perceivable that the authorities, while denying the incidences being visible, do not dispute the sporadic happenstance of such occurrences and speak in a singular voice by decrying such acts. It is also clear that some such Panchayats take the positive stance demonstrating their collective effort as to how they cultivate in people the idea of inter-caste marriage and community acceptance. The duty of this Court, in view of the authorities in the field that deal with specific circumstances, is to view the scenario from the prism of pragmatic ground reality as has been projected and to act within the constitutional parameters to protect the liberty and life of citizens. Commitment to the constitutional values requires this Court to be sensitive and act in such a matter and we shall do so within the permissible boundaries and framework because as the guardian of the rights of the citizens, this Court cannot choose the path of silence.

23. Before we engage ourselves in the process what we have stated hereinabove and refer to the earlier decisions of

this Court, we think it apt to refer to the 242nd Report submitted by the Law Commission of India, namely, “Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework”. The relevant extracts of the Report read as follows:-

> “1.2 At the outset, it may be stated that the words ‘honour killings’ and ‘honour crimes’ are being used loosely as convenient expressions to describe the incidents of violence and harassment caused to the young couple intending to marry or having married against the wishes of the community or family members. They are used more as catch phrases and not as apt and accurate expressions.
>
> 1.3 The so-called ‘honour killings’ or ‘honour crimes’ are not peculiar to our country. It is an evil which haunts many other societies also. The belief that the victim has brought dishonour upon the family or the community is the root cause of such violent crimes. Such violent crimes are directed especially against women. Men also become targets of attack by members of family of a woman with whom they are perceived to have an ‘inappropriate relationship’. Changing cultural and economic status of women and the women going against their male dominated culture has been one of the causes of honour crimes. In some western cultures, honour killings often arise from women seeking greater independence and choosing their own way of life. In some cultures, honour killings are considered less serious than other murders because they arise from long standing cultural traditions and are thus deemed appropriate or justifiable. An adulterous behaviour of woman or pre-marital relationship

or assertion of right to marry according to their choice, are widely known causes for honour killings in most of the countries. The report of the Special Rapporteur to U.N.[1] of the year 2002 concerning cultural practices in the family that are violent towards women indicated that honour killings had been reported in Jordon, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries and that they had also taken place in western countries such as France, Germany and U.K. mostly within migrant communities. The report "Working towards the elimination of crimes against women committed in the name of honour"[2] submitted to the United Nations High Commissioner for Human Rights is quite revealing. Apart from the other countries named above, according to the UN Commission on Human Rights, there are honour killings in the nations of Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey and Uganda. According to Mr. Widney Brown, Advocacy Director for Human Rights Watch, the practice of honour killing "goes across cultures and across religions". There are reports that in some communities, many are prepared to condone the killing of someone who have dishonoured their family. The 2009 European Parliamentary Assembly noted the rising incidents of honour crimes with concern. In 2010, Britain saw a 47% rise of honour-related crimes. Data from police agencies in the UK report 2283 cases in 2010 and most of the attacks were conducted in cities that had high immigrant populations. The national legal Courts in some countries viz., Haiti, Jordon, Syria, Morocco and two Latin American countries do not penalize men killing female relatives found committing adultery or the husbands killing their

[1] http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256 ba7004e963c/$FILE/G0210428.pdf

[2] http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256 c52002ae5a9/$FILE/N0246790.pdf

wives in flagrante delicto. A survey by Elen R. Sheelay [3] revealed that 20% of Jordanites interviewed simply believe that Islam condones or even supports killing in the name of family honour which is a myth.

1.4 As far as India is concerned, "honour killings" are mostly reported from the States of Haryana, Punjab, Rajasthan and U.P. Bhagalpur in Bihar is also one of the known places for "honour killings". Even some incidents are reported from Delhi and Tamil Nadu. Marriages with members of other castes or the couple leaving the parental home to live together and marry provoke the harmful acts against the couple and immediate family members. 1.5 The Commission tried to ascertain the number of such incidents, the accused involved, the specific reasons, etc., so as to have an idea of the general crime scenario in such cases. The Government authorities of the States where incidents often occur have been addressed to furnish the information. The Director (SR) in the Ministry of Home Affairs, by her letter dated 26 May 2010, also requested the State Governments concerned to furnish the necessary information to the Commission. However, there has been no response despite reminder. But, from the newspaper reports, and reports from various other sources, <u>it is clear that the honour crimes occur in those States as a result of people marrying without their family's acceptance and for marrying outside their caste or religion. Marriages between the couple belonging to same Gotra (family name) have also often led to violent reaction from the family members or the community members. The Caste councils or Panchayats popularly known as 'Khap Panchayats' try to adopt the chosen course of 'moral vigilantism' and enforce their diktats by</u>

[3] Quoted in Anver Emon's Article on Honour Killings

> assuming to themselves the role of social or community guardians."
>
> [underlining is ours]

24. Adverting to the dimensions of the problem and the need for a separate law, the Report states:-

> "2.3 The pernicious practice of Khap Panchayats and the like taking law into their own hands and pronouncing on the invalidity and impropriety of Sagotra and inter-caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amounts to flagrant violation of rule of law and invasion of personal liberty of the persons affected.
>
> 2.4 Sagotra marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared the validity of marriages between the Hindus belonging to the same 'gotra' or 'pravara' or different sub-divisions of same caste. The Hindu Marriage Act does not prohibit sagotra or inter-caste marriages."

And further:-

> "2.5 The views of village elders or family elders cannot be forced on the willing couple and no one has a right to use force or impose far-reaching sanctions in the name of vindicating community honour or family honour. There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of or threats of severe bodily harm is resorted to either by close relations or some third parties against the so-called erring couple either on the exhortations of some or all the Panchayatdars or

> with their connivance. Several instances of murder of one or the other couple have been in the news. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section of local inhabitants are quite often resorted to. All this is done in the name of tradition and honour. The cumulative effect of all such acts have public order dimensions also."

25. The Law Commission had prepared a draft Bill and while adverting to the underlying idea of the provisions of the draft Bill, it has stated:-

> "2.8 The idea underlying the provisions in the draft Bill is that there must be a threshold bar against congregation or assembly for the purpose of objecting to and condemning the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same gotra or to different castes or communities. The Panchayatdars or caste elders have no right to interfere with the life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety. Such highhanded acts have a tendency to create social tensions and disharmony too. No frame of mind or belief based on social hierarchy can claim immunity from social control and regulation, in so far as such beliefs manifest themselves as agents of enforcement of right and wrong. <u>The very assembly for an unlawful purpose viz. disapproving the marriage which is otherwise within the bounds of law and taking consequential action should be treated as an offence as it has the potential to endanger the lives and liberties of individuals concerned. The object of such an assembly is grounded on</u>

disregard for the life and liberty of others and such conduct shall be adequately tackled by penal law. This is without prejudice to the prosecution to be launched under the general penal law for the commission of offences including abetment and conspiracy.

2.9 Given the social milieu and powerful background of caste combines which bring to bear intense pressure on parents and relatives to go to any extent to punish the 'sinning' couples so as to restore the community honour, it has become necessary to deal with this fundamental problem. Any attempt to effectively tackle this socio-cultural phenomenon, rooted in superstition and authoritarianism, must therefore address itself to various factors and dimensions, viz, the nature and magnitude of the problem, the adequacy of existing law, and the wisdom in using penal and other measures of sanction to curb the power and conduct of caste combines. The law as it stands does not act either as a deterrence or as a sobering influence on the caste combinations and assemblies who regard themselves as being outside the pale of law. The socio-cultural outlook of the members of caste councils or Panchayats is such that they have minimal or scant regard for individual liberty and autonomy."

[Emphasis added]

26. Highlighting the aspect of autonomy of choices and liberty, the underlying object of the proposed Bill as has been stated by the Law Commission reads as under :-

"4.1 The autonomy of every person in matters concerning oneself – a free and willing creator of one's own choices and decisions, is now central to all thinking on community order and organization. Needless to emphasize that such autonomy with its manifold dimensions is a

constitutionally protected value and is central to an open society and civilized order. Duly secured individual autonomy, exercised on informed understanding of the values integral to one's well being is deeply connected to a free social order. Coercion against individual autonomy will then become least necessary.

4.2 In moments and periods of social transition, the tensions between individual freedom and past social practices become focal points of the community's ability to contemplate and provide for least hurting or painful solutions. The wisdom or wrongness of certain community perspectives and practices, their intrinsic impact on liberty, autonomy and self-worth, as well as the parents' concern over impulsive and unreflective choices – all these factors come to the fore-front of consideration.

4.3 The problem, however, is the menacing phenomena of repressive social practices in the name of honor triggering violent reaction from the influential members of community who are blind to individual autonomy. ..."

27. Thus, the Report shows the devastating effect of the crime and the destructive impact on the right of choice of an individual and the control of the collective over the said freedom. The Commission has emphasized on the intense pressure of the powerful community and how they punish the "sinning couples" according to their socio-cultural perception and community honour and the action taken by them that results in extinction of the rights of individuals which are guaranteed under the Constitution. It has

eloquently canvassed about the autonomy of every person in matters concerning oneself and the expression of the right which is integral to the said individual.

28. Be it noted, the draft Bill refers to "Khap Panchayat" to mean any person or group of persons who have gathered, assembled or congregated at any time with the view or intention of condemning any marriage, including a proposed marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.

29. Presently, we shall advert to certain pronouncements of this Court where the Court, while adjudicating the *lis* of the said nature, has expressed its concern with regard to such social evil which is the manifestation of perverse thought, egotism at its worst and inhuman brutality.

30. In *Lata Singh v. State of U.P. and another*[4], a two-Judge Bench, while dealing with a writ petition under Article 32 of the Constitution which was filed for issuing a writ of certiorari and/or mandamus for quashing of a trial,

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[4] (2006) 5 SCC 475

allowed the writ petition preferred by the petitioner whose life along with her husband’s life was in constant danger as her brothers were threatening them. The Court observed that there is no bar for inter-caste marriage under the Hindu Marriage Act or any other law and, hence, no offence was committed by the petitioner, her husband or husband’s relatives. The Court also expressed dismay that instead of taking action against the petitioner’s brothers for unlawful and high handed acts, the police proceeded against the petitioner’s husband and her sisters-in-law. Being aware of the harassment faced and violence against women who marry outside their caste, the Court observed:-

> “17. ... This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. ...”

31. After so stating, the two-Judge Bench directed the administration/police authorities throughout the country to ensure that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man

who is a major, the couple is neither harassed by anyone nor subjected to threats or acts of violence, and that anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. Deliberating further, the Court painfully stated:-

> "18. We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

32. In *Arumugam Servai v. State of Tamil Nadu*[5], the Court referred to the observations made in *Lata Singh*'s case and opined:-

> "12. We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with

[5] (2011) 6 SCC 405

> the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case*, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal."

33. After so stating, the Court directed the administrative and police officials to take strong measures to prevent such atrocious acts. If such incidents happen, apart from instituting criminal proceedings against those responsible for the atrocities, the State Government was directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them. Be it noted, in the said

case, the Court commented on the appellants that they had behaved like uncivilized savages and deserved no mercy.

34. The aforesaid view of the Court was further emphasized in *Bhagwan Dass v. State (NCT of Delhi)*[6] wherein it has been stated that many people feel that they are dishonoured by the behaviour of the young man/woman who is related to them or belongs to their caste simply because he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities which is wholly illegal. Regard being had to the expression of unhappiness with the behaviour of a daughter or other person, the Court observed that the maximum a person can do is to cut off social relations with her/him, but he cannot take the law into his own hands by committing violence or giving threats of violence.

35. In *Re: India Woman says Gang-raped on Orders of Village Court published in Business & Financial News dated 23-1-2014*[7], the Court, after referring to *Lata Singh*

[6] (2011) 6 SCC 396
[7] (2014) 4 SCC 786

(supra), *Arumugam Servai* (supra) and adverting to the 242nd Report of the Law Commission, opined:-

> "16. Ultimately, the question which ought to consider and assess by this Court is whether the State police machinery could have possibly prevented the said occurrence. The response is certainly a "yes". The State is duty-bound to protect the fundamental rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the State's incapacity or inability to protect the fundamental rights of its citizens."

> And again:-

> "18. As a long-term measure to curb such crimes, a larger societal change is required via education and awareness. The Government will have to formulate and implement policies in order to uplift the socio-economic condition of women, sensitisation of the police and other parties concerned towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women."

36. In *Vikas Yadav v. State of Uttar Pradesh and others*[8], the two-Judge Bench, while dwelling upon the quantum of sentence in the case where the young man chosen by the sister was murdered by the brother who had received education in good educational institutions, observed that the accused persons had not cultivated the

[8] (2016) 9 SCC 541

ability to abandon the deprecable feelings and attitude for centuries. Perhaps, they had harboured the fancy that it is an idea of which time had arrived from time immemorial and ought to stay till eternity. Proceeding further, the Court held:-

> "75. One may feel "My honour is my life" but that does not mean sustaining one's honour at the cost of another. Freedom, independence, constitutional identity, individual choice and thought of a woman, be a wife or sister or daughter or mother, cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so-called brotherly or fatherly honour or class honour by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of "honour", comparable to medieval obsessive assertions."

37. In *Asha Ranjan v. State of Bihar and others*[9], the Court, in a different context, noted:-

> "61. ...choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognised in the Constitution under Article 19, and such a right is not expected to succumb to the concept of "class honour" or "group thinking". It is

[9] (2017) 4 SCC 397

> because the sense of class honour has no legitimacy even if it is practised by the collective under some kind of a notion."

38. In *State of U.P. v. Krishna Master and others*[10], the Court, while setting aside the judgment of acquittal of the High Court, convicted the accused persons with rigorous imprisonment for life and fine of Rs. 25,000/-. It observed that killing of six persons and wiping out of almost the whole family on the flimsy ground of saving of honour of the family would fall within the 'rarest of rare' case evolved by this Court and, therefore, the trial court was perfectly justified in imposing capital punishment on the respondents. However, taking into consideration the fact that the incident had taken place before twenty years, it did not pass the death sentence but imposed the sentence of rigorous imprisonment for life. The said decision reflects the gravity of the crime that occurs due to "honour killing".

39. The aforesaid authorities show the distress with which the Court has perceived the honour crimes and also reflects the uneasiness and anxiety to curb such social symptoms. The observations were made and the directions were issued in cases where a crime based on honour was required to be

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[10] AIR 2010 SC 3071

dealt with. But, the present case, in contradistinction, centres around honour killing and its brutality and the substantive measures to be taken to destroy the said menace. The violation of the constitutional rights is the fulcrum of the issue. The protection of rights is pivotal. Though there has been constant social advancement, yet the problem of honour killing persists in the same way as history had seen in 1750 BC under the Code of Hammurabi. The people involved in such crimes become totally oblivious of the fact that they cannot tread an illegal path, break the law and offer justification with some kind of moral philosophy of their own. They forget that the law of the land requires that the same should be shown implicit obedience and profound obeisance. The human rights of a daughter, brother, sister or son are not mortgaged to the so-called or so-understood honour of the family or clan or the collective. The act of honour killing puts the rule of law in a catastrophic crisis.

40. It is necessary to mention here that honour killing is not the singular type of offence associated with the action taken and verdict pronounced by the Khap Panchayats. It is a grave one but not the lone one. It is a part of honour

crime. It has to be clearly understood that honour crime is the genus and honour killing is the species, although a dangerous facet of it. However, it can be stated without any fear of contradiction that any kind of torture or torment or ill-treatment in the name of honour that tantamounts to atrophy of choice of an individual relating to love and marriage by any assembly, whatsoever nomenclature it assumes, is illegal and cannot be allowed a moment of existence.

41. What we have stated hereinabove, to explicate, is that the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock. Their consent has to be piously given primacy. If there is offence committed by one because of some penal law, that has to be decided as per law which is called determination of criminality. It does not recognize any space for informal institutions for delivery of justice. It is so since a polity governed by 'Rule of Law' only accepts determination of rights and violation thereof by the formal institutions set up for dealing with such situations. It has to be constantly borne in mind that rule of law as a concept is meant to have order in a society. It respects human rights.

Therefore, the Khap Panchayat or any Panchayat of any nomenclature cannot create a dent in exercise of the said right.

42. In this regard, we may fruitfully reproduce a passage from *Kartar Singh v. State of Punjab*[11] wherein C.G. Weeramantry in 'The Law in Crisis – Bridges of Understanding' emphasizing the importance of rule of law in achieving social interest has stated:-

> "The protections the citizens enjoy under the Rule of Law are the quintessence of twenty centuries of human struggle. It is not commonly realised how easily these may be lost. There is no known method of retaining them but eternal vigilance. There is no known authority to which this duty can be delegated but the community itself. There is no known means of stimulating this vigilance but education of the community towards an enlightened interest in its legal system, its achievements and its problems."

Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognized, the said right

11 (1994) 3 SCC 569

needs to be protected and it cannot succumb to the conception of class honour or group thinking which is conceived of on some notion that remotely does not have any legitimacy.

43. The concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. It is the obligation of the Constitutional Courts as the *sentinel on qui vive* to zealously guard the right to liberty of an individual as the dignified existence of an individual has an inseparable association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The fundamental feature of dignified existence is to assert for dignity that has the spark of divinity and the realization of choice within the parameters of law without any kind of subjugation. The purpose of laying stress on the concepts of individual dignity and choice within the framework of liberty is of paramount

importance. We may clearly and emphatically state that life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of identity of a person.

44. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call for their presence or force their appearance as if they are the monarchs of some indescribable era who have the power, authority and final

say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under the criminal law.

45. It has been argued on behalf of the "Khap Panchayats" that it is a misnomer to call them by such a name. The nomenclature is absolutely irrelevant. What is really significant is that the assembly of certain core groups meet, summon and forcefully ensure the presence of the couple and the family members and then adjudicate and impose punishment. Their further submission is that these panchayats are committed to the spreading of awareness of permissibility of inter-community and inter-caste marriages and they also tell the people at large how "Sapinda" and "Sagotra” marriages have no sanction of law. The propositions have been structured with immense craft and advanced with enormous zeal and enthusiasm but the fallacy behind the said proponements is easily decipherable.

The argument is founded on the premise that there are certain statutory provisions and certain judgments of this Court which prescribe the prohibitory degrees for marriages and provide certain guidelines for maintaining the sex ratio and not giving any allowance for female foeticide that is a resultant effect of sex determination which is prohibited under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex Selection) Act, 1994 (for short 'PCPNDT Act') (See : *Voluntary Health Association of Punjab v. Union of India and others*[12] and *Voluntary Health Association of Punjab v. Union of India and others*[13]).

46. The first argument deserves to be rejected without much discussion. Suffice it to say, the same relates to the recognition of matrimonial status. If it is prohibited in law, law shall take note of it when the courts are approached. Similarly, PCPNDT Act is a complete code. That apart, the concern of this Court in spreading awareness to sustain sex ratio is not to go for sex determination and resultantly female foeticide. It has nothing to do with the institution of marriage.

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12 (2013) 4 SCC 1

13 (2016) 10 SCC 265

47. The 'Khap Panchayats' or such assembly should not take the law into their hands and further cannot assume the character of the law implementing agency, for that authority has not been conferred upon them under any law. Law has to be allowed to sustain by the law enforcement agencies. For example, when a crime under IPC is committed, an assembly of people cannot impose the punishment. They have no authority. They are entitled to lodge an FIR or inform the police. They may also facilitate so that the accused is dealt with in accordance with law. But, by putting forth a stand that they are spreading awareness, they really can neither affect others' fundamental rights nor cover up their own illegal acts. It is simply not permissible. In fact, it has to be condemned as an act abhorrent to law and, therefore, it has to stop. Their activities are to be stopped in entirety. There is no other alternative. What is illegal cannot commend recognition or acceptance.

48. Having noted the viciousness of honour crimes and considering the catastrophic effect of such kind of crimes on the society, it is desirable to issue directives to be followed by the law enforcement agencies and also to the various

administrative authorities. We are disposed to think so as it is the obligation of the State to have an atmosphere where the citizens are in a position to enjoy their fundamental rights. In this context, a passage from *S. Rangarajan v. P. Jagjivan Ram and others*[14] is worth reproducing:-

> "51. We are amused yet troubled by the stand taken by the State Government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film, is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

We are absolutely conscious that the aforesaid passage has been stated in respect of a different fundamental right but the said principle applies with more vigour when the life and liberty of individuals is involved. We say so reminding the States of their constitutional obligation to comfort and

[14] (1989) 2 SCC 574

nurture the sustenance of fundamental rights of the citizens and not to allow any hostile group to create any kind of trench in them.

49. We may also hold here that an assembly or Panchayat committed to engage in any constructive work that does not offend the fundamental rights of an individual will not stand on the same footing of Khap Phanchayat. Before we proceed to issue directions to meet the challenges of honour crime which includes honour killing, it is necessary to note that as many as 288 cases of honour killing were reported between 2014 and 2016. According to the data of National Crime Records Bureau (NCRB), 28 honour killing cases were reported in 2014, 192 in 2015 and 68 in the year 2016.

50. We may note with profit that honour killings are condemned as a serious human rights violation and are addressed by certain international instruments. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence addresses this issue. Article 42 reads thus:-

> "Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

> 1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.
>
> 2. Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed."

51. Once the fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation. Therefore, for the sustenance of the legitimate rights of young couples or anyone associated with them and keeping in view the role of this Court as the guardian and protector of the constitutional rights of the citizens and further to usher in an atmosphere where the fear to get into wedlock because of the threat of the collective is dispelled, it is necessary to issue directives and we do so on the foundation of the

principle stated in *Lakshmi Kant Pandey v. Union of India*[15], *Vishaka and others v. State of Rajasthan and others*[16] and *Prakash Singh and others v. Union of India and others*[17].

52. It is worthy to note that certain legislations have come into existence to do away with social menaces like "Sati" and "Dowry". It is because such legislations are in accord with our Constitution. Similarly, protection of human rights is the élan vital of our Constitution that epitomizes humanness and the said conceptual epitome of humanity completely ostracizes any idea or prohibition or edict that creates a hollowness in the inalienable rights of the citizens who enjoy their rights on the foundation of freedom and on the fulcrum of justice that is fair, equitable and proportionate. There cannot be any assault on human dignity as it has the potentiality to choke the majesty of law. Therefore, we would recommend to the legislature to bring law appositely covering the field of honour killing. In this regard, we may usefully refer to the authority wherein this

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[15] (1984) 2 SCC 244
[16] (1997) 6 SCC 241
[17] (2006) 8 SCC 1

Court has made such recommendation. In *Samrendra Beura v. Union of India and others*[18], this Court held:-

> "16. Though such amendments have been made by Parliament under the 1950 Act and the 1957 Act, yet no such amendment has been incorporated in the Air Force Act, 1950. The aforesaid provisions, as we perceive, have been incorporated in both the statutes to avoid hardship to persons convicted by the Court Martial. Similar hardship is suffered by the persons who are sentenced to imprisonment under various provisions of the Act. Keeping in view the aforesaid amendment in the other two enactments and regard being had to the purpose of the amendment and the totality of the circumstances, we think it apt to recommend the Union of India to seriously consider to bring an amendment in the Act so that the hardships faced by the persons convicted by the Court Martial are avoided."

53. Mr. Raju Ramachandran, learned senior counsel being assisted by Mr. Gaurav Agarwal, has filed certain suggestions for issuing guidelines. The Union of India has also given certain suggestions to be taken into account till the legislation is made. To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of

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[18] (2013) 14 SCC 672

the concerned States to add further measures to evolve a robust mechanism for the stated purposes.

I. Preventive Steps:-

(a) The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

(b) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter- religious marriage within their jurisdiction comes to their notice.

(c) If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

(d) On receiving such information, the Deputy Superintendent of Police (or such senior police officer as

identified by the State Governments with respect to the area/district) shall immediately interact with the members of the Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

(e) Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.

(f) If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented

and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C.

(g) The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.

(h) There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.

<u>II. Remedial Measures</u>:-

(a) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the

Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

(b) Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

(c) Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their

families/local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

(d) The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

(e) The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of

Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week.

(f) The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple(s) and, if necessary, invoke Section 151 of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

<u>III. Punitive Measures:-</u>

(a) Any failure by either the police or district officer/officials to comply with the aforesaid directions shall

be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

(b) In terms of the ruling of this Court in *Arumugam Servai* (supra), the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

(c) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

(d) These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

(e) The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The

trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.

54. The measures we have directed to be taken have to be carried out within six weeks hence by the respondent-States. Reports of compliance be filed within the said period before the Registry of this Court.

55. The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

..............................CJI
(Dipak Misra)

.................................J.
(A.M. Khanwilkar)

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(Dr. D.Y. Chandrachud)

New Delhi;
March 27, 2018